No. 83-747

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Petitioner,

v.

PAUL D. JOHNSON, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE COMMONWEALTH OF VIRGINIA AND THE STATE OF MARYLAND AS AMICI CURIAE IN SUPPORT OF THE PETITIONER

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QUESTIONS PRESENTED

1. Whether the builder of an interstate rapid transit system that purchases compensation benefits for injured laborers pursuant to its obligation under a federally approved interstate compact to act as general contractor is entitled to the statutory immunity from suit granted to contractors by the Longshoremen's and Harbor Workers' Compensation Act, or whether, as held by the District of Columbia Circuit, injured employees may recover both compensation and damages from the builder.

2. Whether the builder forfeits its statutory immunity from suit simply because it initially purchased workers' compensation protection for all construction employees rather than first demand that contractors—many of whom were uninsurable—themselves obtain workers' compensation insurance.

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INTEREST OF AMICI

The Commonwealth of Virginia and the State of Maryland are signatories to the Washington Metropolitan Area Transit Authority Compact, Pub. L. No. 89-774, 80 Stat. 1324 (1966). *See* Ch. 2, 1966 Acts of Assembly, Va. Code Ann. § 56-529 (1981); Ch. 869, Acts of General Assembly 1965, Md. Code Ann. [Transportation] § 10-204 (1977). The Compact

created the Washington Metropolitan Area Transit Authority ("WMATA") as the interstate agency of Virginia and Maryland, as well as the District of Columbia, and charged WMATA with the responsibility for constructing and operating the Metro Transit System for the people of the greater Washington, D.C. vicinity on behalf of the signatories. Virginia and Maryland have a continuing role in the construction and operation of the Metro Transit System through their representatives on the WMATA Board. In addition, Virginia and Maryland help to finance that system by contributing state funds for WMATA's operating budget, from which WMATA pays damage awards.[1] The decision below, if affirmed, will subject WMATA to tort liability atop the workers' compensation awards WMATA already has paid as general contractor for the Metro Transit System. Any such ruling would have a serious, adverse financial impact upon Virginia and Maryland. The decision below is therefore of substantial interest to both States.

Moreover, the decision below creates an anomaly in the law applicable to WMATA. The law of Virginia and Maryland clearly would provide a general contractor like WMATA with complete immunity from suit for all employment-related accidents. Prior to the decision of the court below, it was presumed that the same principles of immunity would be applicable in the District of Columbia. If the lower court decision is allowed to stand, that would no longer be true.

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[1] The suburban Virginia communities served by the Metro Transit System also contribute to its operation.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Court of Appeals' decision disregards both the plain language of the applicable statutes and the *quid pro quo* nature of workers' compensation. That decision, moreover, is inconsistent with the signatories' understanding of the law applicable to WMATA at the time of the adoption of the WMATA Interstate Compact, and is at odds with the law applicable to WMATA in the States of Virginia and Maryland. Unless the decision below is reversed, WMATA will be subjected to substantial additional liability under the law of the District of Columbia and will be forced to endure substantial additional litigation that has to date been unnecessary. The signatories, and people of both States, will be deprived of the benefits of WMATA's wrap-up program, and forced to bear unnecessary additional costs in the construction and operation of the Metro Transit System.

ARGUMENT

A. The Court of Appeals' Construction Of The LHWCA Cannot Be Reconciled With The Plain Language Of The Act.

The issue of statutory construction is being dealt with by petitioners and therefore will not be discussed at length here. Suffice it to say that the entirely new responsibility created by the Court of Appeals for contractors cannot be found in the text of the statute. The plain language of the Act requires a contractor to secure workers' compensation coverage, and nowhere requires a contractor to force a subcontractor to do so. There is nothing in the legislative history or purposes of the Longshoremen's and Harbor Workers' Compensation Act ("LHWCA") or the District of Columbia Workmen's Compensation

Act ("DCWCA") to suggest that Congress intended contractors to pursue the two-step process described by the Court of Appeals. The plain meaning of Section 904(a) is therefore conclusive. *See, e.g., Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980).

B. WMATA Is Entitled To Immunity As A "Statutory Employer."

1. It is important to emphasize that the law of Virginia and Maryland would clearly provide a private or public general contractor[2] like WMATA with complete immunity from tort suits like those brought by respondents in the circumstances of this case. *See, e.g.*, Va. Code Ann. §§ 65.1-30 and 65.1-40 (1980); *Evans* v. *Newport News Shipbuilding & Dry Dock Co.*, 361 F.2d 364 (4th Cir.), *cert. denied*, 385 U.S. 959 (1966); *Anderson* v. *Thorington Construction Co.*, 201 Va. 266, 110 S.E.2d 396 (1959) (analogous relationships to those in the instant case), *appeal dismissed for want of a properly presented substantial federal question*, 363 U.S. 719 (1960); Md. Code Ann. art. 101, § 62 (Michie 1979 & Supp. 1983);

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[2] As discussed above, WMATA is an interstate agency created by the WMATA Interstate Compact and entrusted with the responsibility for carrying out the purposes of that Compact: namely, the construction and operation of the Metro Transit System. In that respect, WMATA has the ultimate responsibility for assuring that the construction project authorized by the Compact is completed. WMATA, furthermore, has, and exercises through its Department of Design and Construction, the authority to supervise construction on a day-by-day basis of the numerous subcontractors it has engaged to perform the actual construction work. Hence, we agree with the unanimous conclusion of the lower courts that WMATA is a "contractor" for the purposes of LHWCA Section 904(a). *See, e.g.*, Pet. App. 1a, 6a, 14a, 24a, 28a.

State ex rel. Reynolds v. *City of Baltimore*, 199 Md. 289, 86 A.2d 618 (Md. 1952).[3] This is not only true today, but also was true at the time Virginia and Maryland entered into the WMATA Interstate Compact. *See Anderson* v. *Thorington Construction Co., supra*; *State ex rel. Reynolds* v. *City of Baltimore, supra*. And, based upon prior judicial interpretations of the LHWCA and DCWCA and their underlying purposes, the Acts granted the same degree of immunity to the general contractor. Nothing has been found in the legislative history of Virginia's and Maryland's consideration of the Compact which suggests anything to the contrary. In these circumstances, the signatories' mutual understanding of the liabilities that WMATA would incur under the Compact in the workers' compensation context is entitled to substantial deference. *Cf. Sumitomo Shoji America, Inc.* v. *Avagliano*, 457 U.S. 176, 185 (1982).

Virginia and Maryland entered into the WMATA Compact to resolve transportation problems of mutual concern. WMATA was created to serve as the interstate agency through which both signatories could achieve those goals. Cost is obviously a factor that was given a great deal of attention, and, even though it is recognized that no one can predict the future course of the law with complete accuracy, it can be confidently stated that no one ever predicted that WMATA would be subjected to the double or additional liability that the Court of Appeals has approved. Denying WMATA immunity in the factual setting of this litigation would subject Virginia and

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[3] To be sure, Section 80 of the WMATA Compact requires the law of the signatories to be applied. Nonetheless, where there is ambiguity in the law of any one signatory, substantial weight should be given to the fact that uniformity is of value to an interstate agency like WMATA.

Maryland to substantial additional liability for injury claims arising out of the construction of the still-incomplete Metro Transit System.

While WMATA's revenues are intended to be the principal source of its operating funds, Virginia and Maryland, along with the District of Columbia and the federal government, compensate for any deficit with State funds. *E.g.*, 1982 Va. Acts ch. 684, Apr. 21, 1982 (approving over $40 million for FYs 1982-1984). These subsidies may exceed $200 million for 1984, aside from the effects of the decision below. Lynton, *Metro's Deficit: Relentless Problem*, Wash. Post, Apr. 17, 1983, at B1, B7. WMATA has already paid over 22,000 compensation claims since its wrap-up program went into effect on July 31, 1971. A ruling that exposes WMATA to thousands of suits still within the statute of limitations for past injuries and to an untold number of future suits would plainly have a substantial adverse impact upon the States' treasuries. It is highly unlikely that Virginia and Maryland would have assumed such liability for an *interstate agency* where *private* contractors would not be liable under either State's law.

Further, it is important to have a uniform understanding of the liabilities to which WMATA would be subject. Given the law in Virginia and Maryland, it is clear that WMATA could not be subject to compensation and tort liability if sued under the law of the States. But there are substantial problems that can arise in the determination of the particular law applicable in a given case that can effectively undercut the immunity WMATA would receive from Virginia and Maryland law.

For instance, construction workers will oftentimes work on different projects at various sites throughout

the Metro Transit System, some of which will be located in the District of Columbia while others are situated in the States. In fact, most of the construction has now shifted to the Virginia and Maryland segments of the system. If the Court of Appeals' view were upheld, any employee will allege that he worked in the District of Columbia and will surely claim that his alleged lung injuries were suffered while working there—an allegation that WMATA will often find difficult, if not impossible, to refute.

In such cases, WMATA will therefore consistently find itself in the position of defending tort suits governed by District of Columbia law because only the law of that jurisdiction would enable a construction laborer to obviate the immunity WMATA would receive under both States' law. That result will raise a welter of litigation with respect to the law applicable to WMATA. Plainly, no one but lawyers are benefitted by such litigation. The only alternative is to balkanize any future construction of Metro into discrete construction units, an approach which would unnecessarily restrict WMATA's ability to complete the Metro Transit System in a responsible, cost-effective manner.

That problem is also not limited to construction of the Metro Transit System. WMATA's ability to use a wrap-up program, or similar types of insurance coverage, for everyday injuries arising out of the operation of the Metro would similarly be subject to the vagaries of the site which a claimant could allege as the basis for an injury. Hence, a return to the previous understanding of the law applicable to WMATA, to the extent possible, will best enable the

States to continue to carry out their original goals in the manner that serves the public's needs without unnecessarily complicating WMATA's obligations.

2. Workers' compensation legislation represents a classic compromise of interests for the general good. Employees forsake their common law remedies in order to obtain fixed, prompt benefits. Employers are relieved of expensive litigation, but agree to pay those fixed benefits timely. Given that *quid pro quo*, Congress' failure to repeat the term "contractor" in Section 905(a) is therefore of no consequence. Because the second sentence of Section 904(a) requires a contractor to fulfill the same duties as a subcontractor-employer, the most natural reading of Section 904(a) and 905(a) would afford a contractor the same immunity that Section 905(a) would provide a subcontractor-employer. The contrary conclusion would assume that Congress intended to deny contractors, alone of all the parties required by the LHWCA to obtain workers' compensation coverage, the immunity from suit that had been a hallmark of every workers' compensation program ever adopted. Because nothing in the legislative history or purposes of the LHWCA or DCWCA suggests any such result, it is entirely reasonable to interpret these sections as supplying contractors with immunity from tort suits where a contractor has fulfilled its statutory duty to secure compensation coverage.

3. A denial of immunity would also threaten to undermine a long-standing, necessary, and cost-efficient means of providing workers' compensation coverage for Metro construction employees. WMATA's

wrap-up program is similar to those now universally employed in large construction projects, including ones in the States of Virginia and Maryland. Wrap-up programs efficiently provide a myriad of benefits that would otherwise be lost if each individual subcontractor were forced to obtain its own compensation coverage, assuming that each could do so. *See* Pet. Br. 39-41 & n.56. At the same time, the cost to the public of the WMATA wrap-up program is a far lower cost than that of thousands of individual insurance policies. Denying WMATA immunity from suit would eliminate those cost savings and undermine the integrity of the entire wrap-up program. There is no reason to disregard these benefits—as the Court of Appeals did, *see* Pet. App. 55a—since WMATA's program furthers the purposes of the Act by assuring that employees are fully covered by workers' compensation insurance.

4. Finally, denying WMATA immunity from suit leads to results that Congress could not have intended. *First*, such a ruling would deny WMATA any *quid pro quo* for its purchase of compensation insurance. *Second*, that outcome will lead to delay in the award of compensation benefits and an enormous increase in the litigation of employment-related injuries. Subject to both compensation and tort liability, contractors will surely attempt to cut their losses by demanding indemnification agreements from subcontractors. That will, in turn, lead to additional litigation. At the same time, employees will surely not forego the opportunity to add to their total recovery by bringing tort suits against WMATA.

CONCLUSION

It seems incongruous under the facts of this case that a concerned contractor—securing wrap-up insurance for the benefit of employees, for the benefit of the signatories, and for the benefit of potential bidders—will now not be able to avail itself of the statutory immunity from common law actions that had historically been available under workers' compensation programs. This result, in the face of the language of Sections 904 and 905(a), can only be described as Dickensesque.

For the foregoing reasons, and the reasons given in Petitioner's brief, the judgment of the United States Court of Appeals for the District of Columbia Circuit should be reversed, and the case remanded with directions to reinstate the judgments of the District Court dismissing the complaints.

Respectfully submitted,

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